IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/04/2003

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The Honourable Mr. Justice V.S. SIRPURKAR

W.P.No.16776 of 2000
and W.P.Nos.16777 to 16779, 20857 and 20858 of 2000
AND
W.P. Nos.553, 585, 2925 of 2001 & 34256 and 35055 of 2002

W.P. No.16776 of 2000 etc.

K. Nathmal ..... Petitioner in W.P.16776/2000
K. Dhanasekaran :: Petitioner in W.P.16777/2000
K.S. Sundaram :: Petitioner in W.P.16778/2000
S.D. Premchand :: Petitioner in W.P.16779/2000
S. Santhiraj :: Petitioner in W.P.20857/2000
C. Abdul Khader :: Petitioner in W.P.20858/2000

-Vs-

The District Collector
Kancheepuram District Respondent in all
Kancheepuram ... the above writ petitions

W.P. No.553 of 2001 etc.
Anbhazhagan :: Petitioner in 553 of 2001
N. Mani :: Petitioner in 585 of 2001
Duraiswamy Naicker :: Petitioner in 2925 of 2001
N. Varadhan :: Petitioner in 34256 of 2002
P.V.K. Vasu :: Petitioner in 35055 of 2002

:versus:

The Government of Tamil Nadu
rep. by Secretary
Industries Department
Fort St. George
Chennai 600 009

The District Collector :: Respondents 1 and 2 in
Kancheepuram District all the above petitions

S.D. Premchand
K. Dhanasekaran

K. Nathmal 3rd respondent in the
K.S. Sundaram :: above writ petitions

Petitions under Art.226 of the Constitution of India praying
for Writ of Mandamus/Certiorarified Mandamus as stated
in the respective writ petitions

For Petitioners :: Mr. V.T.GoPalan,
Senior Counsel for
Mr. Ramakrishna Reddy
Mr. V. Ramesh

For Respondents :: Mr. R. Muthukumarasamy
Additional Advocate General
Assisted by D.Krishnakumar
Special Government Pleader

:ORDER

V.S. SIRPURKAR, J.

This judgment shall dispose of two batches of writ petitions.
The first batch will cover the writ petitions, W.P. Nos.16776, 16777, 167 78,
16779, 20857 and 20858 of 2000. In all these writ petitions a direction is
sought to extend the lease for the unutilised period of the same. All the
petitioners in these writ petitions were granted the lease for quarrying sand
on various dates. Their contention is that because of the stay orders, etc.
passed by this Court in some other writ petitions, these petitioners could not
fully utilise the lease and, therefore, they seek the direction to the
Government to permit them to continue the quarrying operation for the
unutilised period. The claimed period is 4 years, 4 months and six days; 3
years and 2 months; 4 years and 4 months; 4 years and 4 months; 2 years and 10
months; and 2 years and 10 months respectively in the above petitions.

2. As against this, writ petitions, W.P. Nos., 553, 585,
2925 of 2 001 and 34256 and 35055 of 2002 are the next batch of writ
petitions, which are opposing the extension of lease on the ground that the
extension would cause serious hazards to the environment inasmuch as the
indiscriminate quarrying of the sand of Palar river would deplete the
ground-water table and would adversly affect the environment. Other ground is
that the vehicles used by the contractors in transporting the sand would cause
fatal accidents and would also spoil the roads.

3. The second batch of writ petitions was in the nature of
Public Interest Litigation. However, since it is connected with the
abovementioned first batch of writ petitions, these writ petitions are made
over to this Court.

4. It is an admitted position that all the leases were granted under Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (in short the Rules) and the said rule now exists no more on the statute book. It is a common ground that all the writ petitioners in the first batch of writ petitions were granted the lease for five years under the provisions of Rule 39 of the Rules which enabled the State Government to grant the lease for more period as compared to the leases under Rule 8. This was a rule enabling the State Government to grant the lease for more than one year and at its discretion. It is a common ground that all the writ petitioners were granted the lease in the months of August, September, and Novermber, 1995 under Rule 39. These grounds were challenged in some writ petitions and the petitioners in those writ petitions were those who were claiming a better right than the present petitioners. In short, they alleged that the leases should have been granted in their favour and not in favour of the present petitioners. Those writ petitions came to be disposed of as infructuous because the original period for which the leases were granted had itself expired. Therefore, they could not claim the grant of lease in their favour. In those writ petitions because of the interim orders passed, the present petitioners in the first batch of writ petitions could not utilise the whole period of five years. The present writ petitions, therefore, came to be filed claiming the relief of extension of the lease for the unutilised period of the lease, which period has already been indicated above in each writ petition.

5. As against this, the petitioners in the second batch of writ petitions say that no such right exists in these petitioners to claim the extension as, according to them, extending the period would amount to re-writing the lease. Their contention is that since the lease period is over, even it has not been utilised for the full five years, still the lessee will not get any right to work those lease further and more particularly beyond the period which period has ended in the year 2000 itself. Besides

this, they have also raised the ground alleging the threat to ecology and environment if the leases were to be extended as prayed for by the petitioners.

6. On this background, we will have to see as to whether firstly any such relief can be granted to the petitioners in the first batch of writ petitions and whether the petitioners in the second batch of writ petitions can justifiably oppose the grant of extension. It is obvious that if the first batch of writ petitions does not succeed, there would be no necessity to decide the second batch of writ petitions.

7. For the sake of narration, facts, dates and the particulars in W.P. No.16776 of 2000 are being utilised.

8. Learned senior counsel, Shri V.T. Gopalan, who led the arguments on behalf of the petitioners in the first batch of writ petitions contends that the petitioners had been able to secure the lease under Rule 39 of the Rules and had also deposited the lease money for five years and had thus moved to their detriment and, therefore, they can legitimately expect to work the lease for the full period of five years and if, for the reasons

beyond their control, they could not work out the lease for the full period of five years then, they had every right to work that lease for the unutilised period. Learned senior counsel points out that in hundreds of writ petitions this position was obtained and in a number of writ petitions, the petitioners were allowed to work out their lease for the unutilised period. A number of orders have been placed before me by the learned senior counsel. Besides, the learned senior counsel says that there is an equity in favour of the petitioners for working out the lease for the unutilised period because they had not only parted with money but they have not been able to utilise their lease period fully owing to the orders passed by this Court in the earlier mentioned writ petitions in which the petitioners therein had claimed a rival right against the present petitioners and had claimed the lease for themselves in place of the present petitioners.

9. As against this, learned Additional Advocate General, Shri R. Muthukumarasamy, who led the arguments on behalf of the Government contends that there is no question of now allowing the petitioners to workout the lease for the unutilised period because that would amount to re-writing the lease, which is not permissible. Learned counsel argues that the Division Bench of this Court has also taken a view that such extension is not possible. Learned counsel points out particularly that there was a policy reflected in Rule 39 to create leases at the discretion of the State Government but, however, the said policy has undergone a sea-change and cannot be perpetuated now. Learned counsel points out that Rule 39 has been effaced from the statute book and does not exist any more with effect from 27th June, 1996. Learned counsel further submits that to permit the petitioners to work out the leases now would cause damage to the State exchequer.

10. Learned counsel also suggested that in so far as the second batch of writ petitions is concerned, there is now a State Level Committee formed to consider the question of quarrying of sand from the river-beds and of the leases and particularly in respect of the Palar river could be granted now only with the recommendation of the said Committee. It is assured by the Additional Advocate General further that even after the lease is granted, the authorities would keep on controlling and monitoring the same and there will be every endeavour to see that the agreement clauses are not breached by either encroaching upon the area or digging up the river-bed deeper than permitted.

11. It is to be seen on this rival pleadings as to whether the petitioners in the first batch of writ petitions have any right. Before the advent of Rule 39 of the Rules on the statute book, the leases were granted under Rule 8 whereunder all the conditions and the modalities for grant of lease were provided. Rule 39 brought a sea-change and created ultimate discretion in the State for granting the lease while the erstwhile Rule 8 provided for holding the auction and/or tender for the grant of lease. Rule 39 stayed on the statute book barely for about three years. It was inserted on 8-3-1993 and was deleted on 27-6-1996. Now for the grant of the leases Rule 8 alone would be available to control the modalities and the conditions of grant. Therefore, there can be no doubt that in deleting Rule 39, the State Government has displayed a change in the policy and what was

hitherto depended upon the discretion of the State Government or its officers now is fully controlled by the Rule. It is an admitted position that the original period of five years in respect of the leases in question has expired in 2002 itself. The relief which is claimed is in the nature of an equitable relief whereunder the petitioners claim the precise period for which the leases remained unutilised due to the stay granted in the writ petitions filed by the rival claimants for these leases. To put the records straight, it will have to be seen as to whether in reality there was a stay.

12. The Court undoubtedly granted stay order but that was only for a fixed period and thereafter, it was an admitted position that the said stay order was not continued further. May be because of the lethargy on the part of the petitioners or the lethargy on the part of the Government to get the stay order vacated. However, the fact remains that the stay order, which was issued for a limited period died its death and therefore, there was nothing to stop the petitioners to work out their leases but, there also it seems that the petitioners did not move the Collector for a good long period of one year and it is only thereafter that the authorities were moved by the petitioners for permitting them to work the leases. Mr. V.T. Gopalan pointed out that in order to quarry the sand, transit passes are necessary and these transit passes were not being given by the Collector and because of that petitioners did not work the leases though there was no stay for the operation of those leases. What is not understood is that as to why the petitioners did not have the troubles to approach the authorities for these transit passes in good time. There can be no dispute that the parties and more particularly, the petitioners herein wasted the time and did not approach the authorities with the alacrity that was demanded and, therefore, the petitioners cannot blame the Government or the Court for not being able to work their leases for the full period of five years. When we see the records closely, it is apparent that the stay period is very short of few weeks.
13. Be that as it may, still the further question would be as to whether the petitioners could be allowed to work out their leases now.

14. Mr. V.T. Gopalan very heavily relied on a few Supreme Court decisions. To begin with, he relied on the decision in SUBHASH CHANDRA CHAUDHARI AND OTHERS v. RAM MILAN AND OTHERS (1997 (4) scc 480). Learned counsel relied on some observations in this case but, before that, it will be interesting to note the facts thereof. The lease was granted for a period of one year but was cancelled by the Commissioner and ultimately the order of the Commissioner was set aside by the State Government. However, the order of the State Government was stayed. The High Court, on a petition by the petitioner to permit him to work the lease for the unutilised period, the High Court had dismissed the petition. The Apex Court, when approached by the petitioner, made the following observations:
It is not in dispute that pursuant to the direction ofthe High Court the auctions were conducted and third parties have been inducted to work out the excavation of the sand; but they are not before us. Though there is some force in the argument of the learned counsel for the appellants that since the working of the period of the lease granted to the appellants was not allowed to be fully utilised on account of the orders passed by the courts or the Commissioner, the time may be extended for the appellants to execute the lease

and work out the lease for the residue period. As stated earlier, since the third party rights have already been intervened, in their absence we cannot give the direction as sought for.
Learned senior counsel very heavily relies on this decision and says that the Supreme Court in this case has actually made observations to the effect that the petitioners did deserve the extension.

15. The next case relied upon was the famous case of KARNAL DURAI v. DISTRICT COLLECTOR, TUTICORIN AND ANOTHER (1999 (1) SCC 475). This case also was under the Tamil Nadu Minor Mineral Concession Rules, 1959, more particularly under Rule 8(a)(i) and (iv)(b). Learned senior counsel pointed out on the basis of the language of Rule 8(8)(a)(i) that the period of lease was bound to be held as starting from the execution of the lease deed and, therefore, opined that the old rule alone was applicable in that case. In the advertisement issued it was notified that the leases were to be given only for two years. The said advertisement was amended and modified and the lease was made for three years, up to 31-3-1998. The petitioner in that case had submitted his tender and was found to be the highest bidder. That offer was, however, not accepted by the Collector who felt that the lease money was insufficient. The offer was rejected under the powers of the Collector under Rule 8(6)(b)(ii). In an appeal, the Collector's order was set aside since the offer made by the petitioner/appellant was not unreasonable. However, the Director applied the provisions contained in the amendment to Rule 8-A, which was introduced on 19-12-19 96, by which additional seigniorage fee was payable in addition to the lease amount. When the appeal was allowed on 1-4-1997, a part of the lease period had already expired. Therefore, the Director granted the lease only for the remaining period from 1-4-1993 up to 31-3-199 8. This was challenged by the petitioner by filing the writ petition in the High Court where it was contend3ed that the Director applied the amended rule dated 19-2-1996 so far as the seigniorage fee was concerned. Therefore, the Director should have also given the benefit of the amendment by which it was stated that the lease should run for the period of three years from the date of execution of the lease. The learned single Judge of this Court dismissed the writ petition observing that the auction notice specified a particular period between 1-1-1995 and 31-3-1998 and, therefore, the appellant could not claim the three years' period as per the amended Rule 8(8)(a). According to the learned single Judge, the amendment was prospective in nature and was not applicable to the leases which had already been processed and rejected by the Collector earlier and that merely because the appellate order was passed subsequent tothe amendment, the appellant could not seek the benefit of the amendment. The Division Bench also confirmed the order in appeal on the ground that if the appeals were to be allowed then the State's economic interests would suffer. The Division Bench also considered that the value of the lease now would be much more than for which the lease was granted. The Division Bench also held that the new rules did not apply. The matters went to the Apex Court and the Apex Court observed that the law was settled in State of Tamil Nadu v. Hind Stone (1981 (2) SCC 205) wherein it was held that the application for grant of lease for minerals under the Rules had to be disposed of on the basis of such rules as were in force at the time when the application was disposed of and not by the rules in force at the time when the application for grant of lease was made. The Apex Court ultimately held that

on the basis of the amended rule, the three-year period for quarrying of sand is to be counted from the date of execution of the lease and apart from the lease amount, seigniorage fee or deed rent or other charges were also required to be paid. The Apex Court, therefore, took the view that the law laid down in Hind Stone case applied fully and, t herefore, the lease would have to be held to have commenced only from the date of execution of the lease deed. Learned counsel very heavily relied on this case. However this case, in my opinion, would have no application except to the extent in this case though the original period of lease was over the petitioners were actually allowed to work out the leases for the extended period though after making some additional payment. In fact, learned senior counsel also candidly agreed that this did not have the direct bearing on the present controversy which pertains to the unutilised period of lease. In Karnal Durai case, cited supra, though the lease was granted in favour of the petitioner, it had never commenced; in the present case, the lease period has already commenced. Not only that but the petitioners also working on the lease for some time and it was thereafter that the stay orders came to be granted by this Court. In my opinion, this decision will have no bearing.

16. Learned senior counsel then invited my attention to yet another decision in BEG RAJ SINGH v. STATE OF U.P. AND OTHERS (2003 (1) SCC 726). The facts in this case are extremely interesting . This was also a case regarding the quarrying of the sand in the river-bed. In that the petitioner had applied for mining lease and the lease was executed for a period of one year with effect from 3-6-1998 and before the expiry of that, the petitioner also sought for renewal for another period of two years which extension was granted by the Collector by order dated 20-12-2000. The consideration for granting the renewal was that as per the policy the lease should have been for a minimum period of three years and that not having been done erroneously by the Collector and the lease having been executed only for a period of one year, the petitioner was entitled for the extension. The Government policy also then underwent a change and the Government now had taken a decision to hold the auction of the sand mining. A competitor of the petitioner preferred a revision against the order of the Collector granting the extension which was a delayed revision. The delay was condoned and the State Government by its order dated dated 22-4-20 00 set aside the order of the Collector influenced mainly by the consideration that the State Government decided to hold the auction of the mining rights, it was likely to gain higher revenue and therefore it was in public interest to transfer mining rights by holding an auction. A revision came to be filed which was dismissed as, in the opinion of the High Court, the period of three years calculated from the date of original grant had in any case come to an end and, therefore, no relief could be granted to the petitioner. The High Court, of course, had given a positive finding in favour of the petitioner that originally itself the lease should have been for three years as per the State Government□s policy and that the State Government was not justified in interfering and setting aside the order of the Collector. However, the High Court went on to dismiss the petition on the ground that the relief could not be really granted. Learned senior counsel then invited my attention to the following observation:

□... we are not satisfied that the petition deserves to be allowed. The

ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner, be attributed to the petitioner. No auction has taken place. No third-party interest has been created. The sand mine has remained unoperated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with GO issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision.

Needless to mention that the learned senior counsel for the petitioners very heavily relies on these observations. He points out the profound similarities in the facts of the reported decision and the present facts. He points out that there are no third-party interests. He also points out that the State Government cannot be allowed to take advantage merely on the economical ground. He further points out that in the aforementioned decision, the petitioner was allowed to work the lease for the rest of the period.

17. As against this, Mr. Muthukumaraswamy, learned Additional Advocate General, firstly invites my attention to few decisions of this Court wherein a view was taken that the leases cannot be extended for the unutilised period. Learned Additional Advocate General also relies on a reported decision of the Apex Court in VERIGAMTO NAVEEN v. GOVERNMENT OF ANDHRA PRADESH (AIR 2001 SC 3609) which also pertains to the mines and minerals leases. Here also, the issue was as to whether the concerned sub-lessees were entitled to be compensated for the loss of period of the mining operation on account of illegal withdrawal of consent and cancellation of the sub-leases by the State Government. According to the learned Additional Advocate General, the ratio laid down by the Supreme Court in refusing to extend the leases on account of the unutilised period would apply more because of the observations of the Supreme Court in paragraph 27. We would choose to rely on the following quotations:

There are at least three weighty reasons as to why the period of sub-lease could not have been extended after the expiry of period of original lease and they are:-
(i) In most of the present cases, the interruptions in respect of which the claim is made is for a period 10 months and in one other case an additional period of 6-1/2 months. In some cases the lease having expired as early as in the year 1995 or in others in 1998, it would not be appropriate to direct the extension of lease in the year 200 1 particularly when the sub-leases have expired as a result of which the parties have to re-establish their infrastructure and put in great deal of logistical support though for a short period once over again, to work the mines which will have a pernicious effect on the mines and the parties concerned.
(ii) The claim for renewal of leases has been refused already as the policy of Government is not to grant lease or sub-lease in favour of private parties. Now to ask to the Government to enter into fresh contracts will be contrary to its policy.
(iii) When several malpractices had been pointed out by house Committee, it would not be in public interest to extend the period of lease which will perpetuate the same.

18. Learned Additional Advocate General points out that in wiping out Rule 39 from the Tamil Nadu Rules the policy decision of the State Government in granting discretionary leases has undergone seachange. He, therefore, contends that as per Rule 8, which would govern the filed, it may not be possible for the Government to grant the leases for the periods sought for by the petitioners and, therefore, it would not be feasible to grant the benefit of the extended leases. In addition to this, learned Additional Advocate General, relied on three Division Bench decisions of this Court, they being The District Collector, Tiruchirappalli and others v. S.R. Pitchai (1989 Writ L.R. 43 5); T. Paulraj v. The District Collector, Kanyakumari District and others (1995-2-L.W. 437); and the decision rendered in W.A. No.1149 of 1999 (K. Kittusamy v. Natarajan and others), to which I was a party.
19. In the first mentioned decision, the Division Bench of this Court (Hon ble Dr. A.S. Anand, Chief Justice as His Lordship then was and Justice Sathiadev) very specifically held that renewal could not be sought for of the mining leases and the remedy of writ petitions could not be used for obtaining such a renewal as the renewal would merely amount to re-writing the lease. The Court, in this case, came to the conclusion, firstly, the petitioner had not made the application in time and secondly, when the rules contemplated renewal and in the absence of the order of renewal, it is not for the Court to permit any quarrying operations against the rules by imposing conditions in any manner. The Court observed that the discretionary powers of the Court do not go to the extent of re-writing the terms of the lease and by imposing the conditions which are not permissible under the Rules.

20. In Paulraj s case, cited supra, again the Division Bench of this Court (Hon ble Mr. K.A. Swamy, Chief Justice and Hon ble Mr. Justice D. Raju, as His Lordship then was) observed that the contract was governed by the rules and, therefore, for anything and everything the lessor

and the lessee must look to the rules only. The Division Bench took the view that if the period was to be altered, it could be done only by the alteration of the terms of the contract by the parties to the contract as per the rules and, therefore, it was not possible to grant the relief sought for by the appellant that the three years period of the lease should be counted from the date of confirmation of the lease in the absence of any provision contained in the rules. The Division Bench also left open to the parties to work their remedies by way of damages before the appropriate court.

21. In the last Division Bench judgment, to which I was a party, the Division Bench confirmed the judgment of the learned single Judge wherein the learned single Judge has held that awarding of the contract for the quarrying of the sand for the extra period, which was lost because of the stay orders passed by the Court, was not correct. In that case, the learned single Judge had pointed out that the original No Objection Certificate pertained only for the period 1-9-1996 to 31-8-1998 and, therefore, if the lease period was to be extended for the unutilised period, the lease period would have to be from 1-4-199 8 to 31-3-2001 and, therefore, the lease could not be granted without inviting the No Objection Certificates from the Pollution Control Board or from the other relevant authorities pertaining to the extended period. This the learned single Judge had observed relying upon Rule 15. When the matter came before the Division Bench even that period had expired and, therefore, the petitioner sought for a direction for extension of the lease further. The Division Bench had taken a view that in view of the expiry of the period sought for in the writ petition, the writ petition as well as the writ appeal become meaningless. In that case, it was further observed:
We cannot now create a new lease for the appellant even if we conclude that the learned single Judge should not have set aside the lease

The Division Bench further found that it was not for the fault of the original writ petitioner that he could not work out his lease. It was, therefore, directed as under:
However, considering that the appellant has suffered serious prejudice, he is free to make a representation before the concerned authority for the refund of his remaining consideration.
The Division Bench further observed that it would for the Collector to consider all those questions if a representation in that was made.

22. In short, all these three Division Bench decisions of this Court had declined to extend the period of lease.

23. It was further pointed out to us by the learned Additional Advocate General that a learned single Judge (P. Shanmugam, J.) had dealt with a batch of writ petitions (W.P. Nos.3551 of 1999 etc.) wherein the learned single Judge had formulated two questions, viz.
1.Whether the lease is for a block period of three years or five years, as the case may be, or it must end with the date specified in the lease deed?
2.Whether the amendment to Rule 8 will apply to the existing leases so as to count the period from the date of execution of the lease?
We really find no support in this judgment because predominantly, this

judgment pertains to the controversy as to what is the starting point of the lease period. The support that the learned Additional Advocate General draws is from paragraph 14 of the judgment wherein the learned single Judge refuses to grant the extension of lease because of Rule 8(8) as per the view taken by the Division Bench earlier. The learned single Judge has also referred to the judgment in Karnal Durai's case, cited supra. The learned single Judge has further observed in paragraph 18 that wherever the question relating to loss of period due to disputes with third parties or other issues like lack of access or permission from the concerned authorities arises, it could not be a ground for the extension of the corresponding period of lease lost due to those circumstances.

24. On these conflicting case-law, it has to be seen whether the petitioners are entitled to the relief that they claim. Needless to mention that the main thrust of the petitioners' case depends on the ratio laid down by the Supreme Court in Beg Raj Singh's case, cited supra. When we see the facts in that case, to which we have referred to earlier, in paragraph 16 it will be seen that there the petitioner had sought for a renewal for the period of two years and the Collector had granted the extension by his order dated 20-12-2000. A view was taken that originally itself the lease should have been for a minimum period of three years and erroneously the lease was granted only for a period of one year. It was then that the Government had taken a decision to hold the auction for the sand-quarrying leases and it was at the instance of a competitor of the petitioner that the matter was carried by way of revision to the State Government and the Government then refused to extend the lease by setting aside the order of the Collector where the main consideration was that the State Government had decided to hold the auction for gaining higher revenue and, therefore, it was in public interest to transfer the mining rights only by holding auction. It was under those circumstances that the Supreme Court found that the delay in taking the decision was not attributable to the petitioner; no auction had taken place and no third party interest was created; the sand-mine remained unoperated for a period of three years; and the operation had to be stopped because of the order of the State Government. The Supreme Court, therefore, observed that merely because a little higher revenue could be earned by the State Government that could not be a ground for not enforcing the obligation of the State Government which it had incurred in accordance with its own policy decision. The situation, we are afraid, is not the same here even on facts. We would have to definitely take into consideration that though the leases were given as per the policy that policy itself was changed due to the effacement of Rule 39 from the array of the Rules. The leases were then to remain for the block periods and were governable under Rule 8 only. In this case, it would be seen that originally leases were created somewhere in the year 1995 and all the periods came to an end by the year 2000. We are already in the year 2003 and in between Rule 39 was dropped in the year 1996 itself. True it is, that the leases could not be worked due to stay orders for a short period of time, which order was also not of the permanent nature. We are, therefore, inclined to accept the contention of the learned Additional Advocate General that we must see and note the change in the policy of the Government in removing the grant of discretionary leases for the long periods like five years. The period now is controlled by Rule 8. In this case, the petitioner cannot be

said to be altogether without fault. After the first stay order had become ineffective on account of elapse of time, the petitioners have waited almost for one year. They should have moved immediately approached the authorities or at least approached this Court. That they did not do. It was almost after a year after the stay order had ceased to remain effective that they approached the authorities for further mining. One full year was lost. Therefore, it cannot be said that the ground realities have remained the same. By the efflux of time the ground realities have certainly changed.

25. Learned Additional Advocate General pointed out that these leases were for the vast areas and now there cannot be a lease beyond ten acres. He was at pains to point out that some of the leases pertained to more than hundred acres of river bed. He, therefore, points out that it will not be in anybody□s interest and more particularly public interest to allow the leases to be re-written. In my opinion, learned Additional Advocate General is right in claiming that by allowing the working of the leases for the unutilised periods, the Court would be practically re-writing the leases. True it is that there is no third party interests in the sense that the learned counsel for the petitioners would want me to understand but, it cannot be forgotten that there is a public interest now working against the petitioners inasmuch as some persons have now challenged by way of public interest litigation the grant of lease itself on the ground that it would cause severe prejudice to the drinking water system in the area. This is apart from the fact that according to the learned Additional Advocate General, there are very serious financial considerations. He points out that the consideration of the leases now is not even comparable to the consideration for the old leases and, therefore, in granting the renewal, the State Government would suffer financially to a very great extent. This statement was also not seriously disputed at the Bar. Learned Additional Advocate General cited some examples suggesting that the State Government would be put to a tremendous loss if the leases are allowed now to be renewed on the same terms.

26. Shri V.T. Gopalan, learned senior counsel for the petitioners, however, contended that the petitioners were prepared to pay in terms of some of the orders passed by this Court earlier extending the lease period. However, we will have to take into account the changed scenario, which is obtained from the State Government□s counter. In their counter, the State Government has pleaded that in pursuance of the directions given by the High Court of Madras in W.P. No.10632 of 1 998 dated 14-7-1999, the Government had constituted a River Management Committee to monitor and to see whether quarrying of sand was being carried in strict in accordance with the rules and regulations. This Committee was constituted on 14-2-2000 vide R.C. No.2310/99/Q1. The object of this Committee was predominantly to monitor the sandquarrying and also taking steps to curb the illicit quarrying of sand in Kancheepuram district in consultation with the Public Works Department authorities as contemplated in Rule 15 of the Tamil Nadu Minor Minerals Concession Rules 1959 and during the past two years 446 lorries transporting sand illicitly in Kancheepuram District were seized and penalty of Rs.1,02,20,950/- had to be imposed. This is besides the 7 8 criminal cases

which were also registered. It is further pointed out in the counter that six additional conditions have now been imposed on account of the findings of the said Committee. They being:
1.No quarrying of sand should be done within a radius of 500 Metres from the infiltration wells, drinking water pumps, bridges.
2.Quarrying should not be done within 50 metres from the banks on either side.
3.The depth of quarrying allowed only for 1 metre.
4.The quarrying operation is allowed only between 6 A.M. to 6 P.M.
5.The vehicle carrying sand should possess valid transport permit.
6.The vehicle carrying sand should be covered in order to prevent pollution.
The counter further says that in order to study the effects of sand quarrying in the river beds on a scientific basis, the Government have constituted a High Level Committee in G.O.2(D) No.46 Industries Department dated 25-9-2002 consisting of the following persons:
1.Head of the Department of the Geology and Director, Centre for Geo Science and Engineering, Anna University (Geologist)
2.Assistant Professor of Geology, Centre for Geo Science and Engineering, Anna University (Hydrogeologist)
3.Dy. Director Sri. A.M. Murugappa Chettiar Research Centre, Taramani (Environmentalist)
4.Vice Chairman, Cauvery Technical Cell, Public Works Department, Chepauk (Environmentalist) and
5.The Superintending Engineer, public Works Department, Palar Basin Circle, Chepauk (Member).
It is reiterated further that this Committee toured the whole State to conduct the scientific survey and river beds and report any damage caused on account of indiscriminate and illegal quarrying of sand. It is pointed out therein that this Committee has already confiscated the sand quarries in Kancheepuram district to which the present petitions pertained and the findings of the Committee were awaited. Now obviously these facts would change the whole scenario and if the leases were to be extended for the substantial periods like four years, it would be only at the cost of economy of the Government, the ecology system and the drinking water facilities of the area. I fully realise that the petitioners cannot be completely found to be at fault for the elapse of time but the fact of the matter is that the times have changed and so have the ground realities. In this case particularly the leases which were granted in the year 1995 and which would have ordinarily ended by the year 2000 would have to be worked out from 200 3-2007 when there is a complete change in the ground realities. The earlier leases could not be said to have been granted taking into consideration their effect on ecological systems, ground-water table and the environments which considerations reigns now in so far as the sand quarrying leases are concerned. This would be another reason why I would be slow to accept the contentions of the petitioners. No doubt, learned counsel for the petitioners contends that the petitioners are prepared to follow all the rules but, however, since the report of the Committee constituted by the Government, to which I have already referred, has not come in respect of sand-quarrying leases on Palar river in Kancheepuram district, it may not be feasible at this stage to order the renewal of the leases. Petitioners cannot be said to have established their rights in respect of the leases. The environment aspect is found to be conspicuously absent in the decision of the Supreme Court in Beg Raj Singh□s case, cited supra. That is

the biggest differentiating factor in the matter. Again from the language of the decision, it is clear that the Apex Court has chosen to hold in favour of the lessees in the circumstances of that case, which circumstances are clearly distinguishable in our case. It will, therefore, be not possible for me to accept the contention of the petitioners that the leases in their favour should be extended by the period for which the leases remained unutilised during the lease period. The first batch of writ petitions, therefore, is liable to be dismissed and they are dismissed.

27. Once those writ petitions are dismissed, there would be in reality no reason for me to proceed with the second batch of writ petitions, which have been filed in the nature of Public Interest Litigation. In all these writ petitions, a complete ban is sought on the sand quarrying right up to the Bay of Bengal.

28. Shri V.T. Gopalan, learned senior counsel very seriously opposed all these petitions firstly on the ground of laches. He pointed out that the petitioners in these petitions have suddenly chosen to spring up only when the petitions were filed to extend the leases. Learned counsel pointed out that out of these petitions, in W.P. No.585 of 2001, the petitioner had accepted some amounts and has chosen not to press the writ petition. Learned counsel for the petitioner in that petition made an unequivocal statement that he was not pressing that writ petition and would disassociate himself from that petition. That writ petition has to be dismissed and is dismissed.

29. In the other writ petition, W.P. No.553 of 2002, it is pointed out by the learned senior counsel, Shri V.T. Gopalan, that the said person who had filed the petition in his official capacity stood removed from the office. In the other three petitions, however, learned counsel for the petitioners very seriously argued the matter in favour of the total ban on sand quarrying relying on a study group headed by Hon□ble Shri Justice V.R. Krishna Iyer and consisted of a number of other luminaries including the experts in the field. According to the learned counsel that this study gave raise to only one consequence that there should be a complete ban on the sand-quarrying.

30. I will not go into the correctness of this report. It is not for this Court to go into the correctness of the report. However, all that I would observe is that the Government shall take into consideration all the aspects including the findings in this report while deciding to grant sand-quarrying leases particularly in respect of the river Palar in the district of Kancheepuram. There can be no doubt about the studious and the sincere efforts made by the men of eminence and indeed no prejudice could be imputed to them as was tried to be done at Bar. The Court hopes that the Committee constituted by the State Government, to which I have made a reference earlier, takes into consideration the ecological and environmental factors as also the ground-water table and recommends accordingly to the Government and the Government would certainly be bound to take into consideration all the aspects while deciding upon the grant of sand-quarrying leases. The second batch of writ petitions is disposed of on this note.

32. In the result, the first batch of writ petitions, viz. W.P. Nos.W.P.Nos.16776 to 16779, 20857 and 20858 of 2000 are dismissed. In the second batch of writ petitions, W.P. No.585 of 2001 is dismissed while W.P. No.553 and 2925 of 2001 and 34256 and 35055 of 2002 are disposed of. No costs. W.P.M.P. Nos.24259, 24262, WVMP 29194 and 2919 7, 30330 and 30331 of 2000; 723, 774, 4001, 25746 of 2001 and 52186, 52187, 52188, 50995, 50996 of 2002 are closed.

Index:Yes
Website:Yes

Jai

To:
1. The Secretary to Government
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Government of Tamil Nadu
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2. The District Collector
Kancheepuram District